



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
TEGE:EO Examinations
1100 Commerce Street, MC 4920 DAL
Dallas, TX 75242

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Date: April 6, 2016

Number: 201630017
Release Date: 7/22/2016

Person to Contact:

Identification Number:

Contact Telephone Number:

UIL Code: 501.03-00

EIN:

CERTIFIED MAIL – Return Receipt Requested

Dear _____ :

This is a final determination that your exempt status under section 501(c)(3) of the Internal Revenue Code is revoked. Recognition of your exemption under Internal Revenue Code section 501(c)(3) is revoked effective January 1, 2012 for the following reasons:

You have failed to produce documents to establish that you are operated exclusively for exempt purposes within the meaning of Internal Revenue Code section 501(c)(3), and that no part of your net earnings inure to the benefit of private shareholders or individuals. You failed to respond to repeated reasonable requests to allow the Internal Revenue Service to examine your records regarding your receipts, expenditures, or activities as required by I.R.C. sections 6001, 6033(a)(1) and Rev. Rul. 59-95, 1959-1 C.B. 627.

As such, you failed to meet the requirements of I.R.C. section 501(c)(3) and Treasury Regulation Section 1.501(c)(3)-1(a)(1) in that you failed to establish that you are operated exclusively for exempt purposes within the meaning of Internal Revenue Code section 501(c)(3).

Contributions to your organization are no longer deductible under section 170 of the Internal Revenue Code, effective January 1, 2012.

You are required to file Federal income tax returns on Form 1120. These returns should be filed with the appropriate Service Center for the year ending December 31, , and for all subsequent years.

Processing of income tax returns and assessment of any taxes due will not be delayed should a petition for declaratory judgment be filed under section 7428 of the Internal Revenue Code.

If you decide to contest this determination in court, you must initiate a suit for declaratory judgment in the United States Tax Court, the United States Claim Court or the District Court of the United States for the District of Columbia before the 91st day after the date this determination was mailed to you. Contact the clerk of the appropriate court for the rules for initiating suits for declaratory judgment. Please contact the clerk of the respective court for rules and the appropriate forms regarding filing petitions for declaratory judgment by referring to the enclosed Publication 892. Please note that the United States Tax Court is the only one of these courts where a declaratory judgment action can be pursued without the services of a lawyer. You may write to the courts at the following addresses:

United States Tax Court
400 Second Street, NW
Washington, DC 20217

US Court of Federal Claims
717 Madison Place, NW
Washington, DC 20005

U. S. District Court for the District of Columbia
333 Constitution Ave., N.W.
Washington, DC 20001

The Taxpayer Advocate Service (TAS) is an independent organization within the IRS that can help protect your taxpayer rights. We can offer you help if your tax problem is causing a hardship, or you've tried but haven't been able to resolve your problem with the IRS. If you qualify for our assistance, which is always free, we will do everything possible to help you. Visit taxpayeradvocate.irs.gov or call 1-877-777-4778.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely yours,

Enclosures:
Publication 892
Envelope

Paul A. Marmolejo
Acting Director, EO Examinations

Internal Revenue Service
Tax Exempt and Government Entities Division
Exempt Organizations: Examinations
1555 Poydras Street, Stop 17
New Orleans, LA 70112

Department of the Treasury

Date: January 13, 2016

Taxpayer Identification Number:

Form:

Tax Year(s) Ended:

Person to Contact/ID Number:

Contact Numbers:

Manager's name/ID number:

Manager's contact number:

Response due date:

Certified Mail – Return Receipt Requested

Dear _____ :

Why you are receiving this letter

We propose to revoke your status as an organization described in section 501(c)(3) of the Internal Revenue Code (Code). Enclosed is our report of examination explaining the proposed action.

What you need to do if you agree

If you agree with our proposal, please sign the enclosed Form 6018, *Consent to Proposed Action – Section 7428*, and return it to the contact person at the address listed above (unless you have already provided us a signed Form 6018). We'll issue a final revocation letter determining that you aren't an organization described in section 501(c)(3).

After we issue the final revocation letter, we'll announce that your organization is no longer eligible for contributions deductible under section 170 of the Code.

If we don't hear from you

If you don't respond to this proposal within 30 calendar days from the date of this letter, we'll issue a final revocation letter. Failing to respond to this proposal will adversely impact your legal standing to seek a declaratory judgment because you failed to exhaust your administrative remedies.

Effect of revocation status

If you receive a final revocation letter, you'll be required to file federal income tax returns for the tax year(s) shown above as well as for subsequent tax years.

What you need to do if you disagree with the proposed revocation

If you disagree with our proposed revocation, you may request a meeting or telephone conference with the supervisor of the IRS contact identified in the heading of this letter. You also may file a protest with the IRS Appeals office by submitting a written request to the contact person at the address listed above within 30 calendar days from the date of this letter. The Appeals office is independent of the Exempt Organizations division and resolves most disputes informally.

For your protest to be valid, it must contain certain specific information including a statement of the facts, the applicable law, and arguments in support of your position. For specific information needed for a valid protest, please refer to page one of the enclosed Publication 892, *How to Appeal an IRS Decision on Tax-Exempt Status*, and page six of the enclosed Publication 3498, *The Examination Process*. Publication 3498 also includes information on your rights as a taxpayer and the IRS collection process. Please note that Fast Track Mediation referred to in Publication 3498 generally doesn't apply after we issue this letter.

You also may request that we refer this matter for technical advice as explained in Publication 892. Please contact the individual identified on the first page of this letter if you are considering requesting technical advice. If we issue a determination letter to you based on a technical advice memorandum issued by the Exempt Organizations Rulings and Agreements office, no further IRS administrative appeal will be available to you.

Contacting the Taxpayer Advocate Office is a taxpayer right

You have the right to contact the office of the Taxpayer Advocate. Their assistance isn't a substitute for established IRS procedures, such as the formal appeals process. The Taxpayer Advocate can't reverse a legally correct tax determination or extend the time you have (fixed by law) to file a petition in a United States court. They can, however, see that a tax matter that hasn't been resolved through normal channels gets prompt and proper handling. You may call toll-free 1-877-777-4778 and ask for Taxpayer Advocate assistance. If you prefer, you may contact your local Taxpayer Advocate at:

Internal Revenue Service
Office of the Taxpayer Advocate

For additional information

If you have any questions, please call the contact person at the telephone number shown in the heading of this letter. If you write, please provide a telephone number and the most convenient time to call if we need to contact you.

Thank you for your cooperation.

Sincerely,

/for/
Margaret Von Lienen
Director, EO Examinations

Enclosures:
Report of Examination
Form 6018
Publication 892
Publication 3498

Form 886-A (Rev. January 1994)	EXPLANATIONS OF ITEMS	Schedule number or exhibit
Name of taxpayer	Tax Identification Number	Year/Period ended December 31, 20XX December 31, 20XX

Issue:

Whether _____ qualifies for exemption under Section 501(c)(3) of the Internal Revenue Code.

Whether direct payments to _____ in the amount of \$ _____ for 20XX and \$ _____ for 20XX were unreported compensation and constitutes inurement within the meaning of I.R.C. section 501(c)(3).

Whether payments to _____ in the amount of \$ _____ for 20XX and \$ _____ for 20XX were unreported compensation that constitutes inurement within the meaning of I.R.C. section 501(c)(3).

Whether purchases by check or debit card in the amount of \$ _____ for 20XX and \$ _____ for 20XX were personal in nature and constitutes inurement within the meaning of I.R.C. section 501(c)(3).

Facts:

_____ was duly incorporated under the laws of the State of _____ pursuant to the _____ on August 4, 19XX.

On January 30, 20XX _____ applied for exemption with the Internal Revenue Service.

On May 1, 20XX _____ was granted exemption by the Internal Revenue Service.

According to the Articles of Incorporation, the name and address of the incorporator is _____ at _____.

According to the State of _____, _____ owned _____ and is spouse of _____.

According to the State of _____, _____ owns _____.

_____ filed the Form 990 for 20XX but didn't file the 20XX return.

- Form 990 for year ending December 31, 20XX:
 - Part IV Checklist of Required Schedules.
 - **Line 25a** Section 501(c)(3) and 501(c)(4) organizations.
 - Did the organization engage in an excess benefit transaction with a disqualified person during the year?

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- stated "No".
- **Line 25b** (Is the organization aware that it engaged in an excess benefit transaction.....).
- stated "No".
- **Line 26** (Was a loan to or by a current or former officer, director, trustee, key employee, highly compensated employee, or disqualified person outstanding as of the end of the organization's tax year? *If "Yes," complete Schedule L' Part II*).
- stated "No".
- didn't file a Schedule L.
- Part VI Section A (Governing Body and Management)
 - **Line 1A** (Enter the number of voting members of the governing body at the end of the tax year), stated .
- Part VII Section A (Officers, Directors, Trustees, Key Employees, and Highest Compensated Employees.
 - included as Founder an Officer and Key Employee, with reported \$ compensation.
 - didn't include compensation for related organizations.
- Part IIIV Statement of Revenue.
 - **Line 1a – 1f** (Contributions, gifts, grants, and similar amounts).
 - reported \$ in grants from two non-related organizations.
- Part IX Statement of Functional Expenses.
 - **Line 2** (Grants and other assistance to individuals in the US) is blank.
 - **Line 5** (Compensation of current officers, directors, trustees, and key employees) is blank.
- Schedule A Public Charity Status and Public Support.
 - Part I Reason for Public Charity Status.
 - **Line 7** (An organization that normally receives a substantial part of its support from a governmental unit or from the general public described in **Section 170(b)(1)(A)(vi)** (Complete Part II)) was checked.
 - Part II Support Schedule for Organizations Described in Sections 170(b)(1)(A)(iv) and 170(b)(1)(A)(vi).
 - didn't complete Part II.
- Schedule D Supplemental Financial Statements.
 - Part VI Investments – Land, Buildings, and Equipment.
 - **Line 1b** (Building) was filed in.

According to the Form 1023 application is a program to provide high quality, structured, innovative educational programs for inner city students in low income housing. stemmed from an earlier community based education initiative, the , which was developed and led by student activist

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, a former resident of the _____ and recent graduate of _____. Thus grass-root, student run operation is centrally located in the _____ in _____ and stands as a testament of true initiative by college students willing to give back to a community. While serving, student volunteers receive training from experts in the field and can grow personally and professionally from gaining knowledge and skills via many community base workshops.

- However, _____ has ceased operations.

According to the _____ bank statements, _____ made payments to _____ from January 9, 20XX through August 1, 20XX (see Schedule A).

- _____ issued the Form W-2 to _____ in the amount of \$ _____ in 20XX and \$ _____ in 20XX.
- _____ made payments of \$ _____ in 20XX and \$ _____ in _____
- _____ hasn't provided receipts for the payments to _____.

According to the _____ bank statements, _____ made payments/transfers to _____ from January 9, 20XX through April 29, 20XX (see Schedule B).

- _____ made payment of \$ _____ in 20XX and \$ _____ in 20XX.
- _____ hasn't provided documentation show business purpose of these payments.

According to the _____ bank statements, _____ made payments to _____ on December 10 and 11, 20XX (see Schedule C).

- _____ made payments of \$ _____ in 20XX.
- _____ hasn't provided documentation show business purpose of these payments.

According to the _____ bank statements, _____ wrote checks, made debit card purchases, and withdrew cash that appear personal in nature from January 3, 20XX through October 16, 20XX (see Schedule D).

- _____ made purchases of \$ _____ in 20XX and \$ _____ in 20XX.
- These purchases included food, dinning out, parking while eating out, gas, vehicle repair, furniture, books, and a timeshare (vacation) that appear personal in nature.

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- These purchases weren't reported as income.
- hasn't provided receipts for the purchases made.

When asked for receipts, provided "Lost Receipt Affidavit" statements for all receipt requested in Information Document Request # 3 stating that the receipts were lost. These affidavits weren't signed or approved expenses.

LAW

Section 1.501(c)(3)-1(a) of the regulations states that an organization must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt.

Income Tax Regulation ("Regulation") section 1.501(c)(3)-1(c)(2) provides that an organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals.

Regulation section 1.501(c)(3)-1(d)(1)(ii) provides that an organization is not organized or operated exclusively for one or more of the purposes specified in subdivision (i) of this subparagraph unless it serves a public rather than a private interest. Thus, to meet the requirement of this subdivision, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

In *Better Business Bureau of Washington D.C., Inc. v. United States*, 326 U.S. 279 (1945), the Supreme Court held that the presence of a single non-exempt purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly exempt purposes. The Court found that the trade association had an "underlying commercial motive" that distinguished its educational program from that carried out by a university.

Section 3121(a) of the Code, states that for purposes of this chapter, the term "wages" means all remuneration for employment, including the cash value of all remuneration (including benefits) paid in any medium other than cash; except that such term shall not include.

Section 4958(c)(1)(A) of the Code, states the term "excess benefit transaction" means any transaction in which an economic benefit is provided by an applicable tax-exempt organization directly or indirectly to or for the use of any disqualified person if the value of the economic benefit provided exceeds the value of the consideration (including the

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performance of services) received for providing such benefit. For purposes of the preceding sentence, an economic benefit shall not be treated as consideration for the performance of services unless such organization clearly indicated its intent to so treat such benefit.

Section 4958(f)(1)(A) of the Code, states the term "disqualified person" means, with respect to any transaction— any person who was, at any time during the 5-year period ending on the date of such transaction, in a position to exercise substantial influence over the affairs of the organization.

Section 4958(f)(1)(B) of the Code states the term "disqualified person" means, with respect to any transaction— a member of the family of an individual described in subparagraph (A).

Section 1.62-2(c)(1) of the Code states for purposes of sections 1.62-1, 1.62-1T, and 1.62-2, the phrase "reimbursement or other expense allowance arrangement" means an arrangement that meets the requirements of paragraphs (d) (business connection, (e) (substantiation), and (f) (returning amounts in excess of expenses) of this section. A payor may have more than one arrangement with respect to a particular employee, depending on the facts and circumstances. See paragraph (d)(2) of this section (payor treated as having two arrangements under certain circumstances).

Section 1.62-2(d)(1) of the Code states in part, except as provided in paragraphs (d)(2) and (d)(3) of this section, an arrangement meets the requirements of this paragraph (d) if it provides advances, allowances (including per diem allowances, allowances only for meals and incidental expenses, and mileage allowances), or reimbursements only for business expenses that are allowable as deductions by part VI (section 161 and the following), subchapter B, chapter 1 of the Code, and that are paid or incurred by the employee in connection with the performance of services as an employee of the employer. The payment may be actually received from the employer, its agent, or a third party for whom the employee performs a service as an employee of the employer, and may include amounts charged directly or indirectly to the payor through credit card systems or otherwise.

Section 1.62-2(e)(1) of the Code states, an arrangement meets the requirements of this paragraph (e) if it requires each business expense to be substantiated to the payor in accordance with paragraph (e)(2) or (e)(3) of this section, whichever is applicable, within a reasonable period of time. See section 1.274-5T or section 1.162-17.

Section 1.62-2(e)(2) of the Code states, an arrangement that reimburses travel, entertainment, use of a passenger automobile or other listed property, or other business expenses governed by section 274(d) meets the requirements of this paragraph (e)(2) if

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information sufficient to satisfy the substantiation requirements of section 274(d) and the regulations thereunder is submitted to the payor. See section 1.274-5. Under section 274(d), information sufficient to substantiate the requisite elements of each expenditure or use must be submitted to the payor. For example, with respect to travel away from home, section 1.274-5(b)(2) requires that information sufficient to substantiate the amount, time, place, and business purpose of the expense must be submitted to the payor. Similarly, with respect to use of a passenger automobile or other listed property, section 1.274-5(b)(6) requires that information sufficient to substantiate the amount, time, use, and business purpose of the expense must be submitted to the payor. See sections 1.274-5(g) and 1.275-(j), which grant the Commissioner the authority to establish optional methods of substantiating certain expenses. Substantiation of the amount of a business expense in accordance with rules prescribed pursuant to the authority granted by sections 1.274-5(g) or 1.274-5(j) will be treated as substantiation of the amount of such expense for purposes of this section.

Section 1.274-2(a)(2)(i) of the Code states, expenditures paid or incurred after December 31, 1978, and not with respect to a club. Except as provided in this section with respect to a club, no deduction otherwise allowable under chapter 1 of the Code shall be allowed for any expenditure paid or incurred after December 31, 1978, with respect to a facility used in connection with entertainment.

Section 1.274-5(f)(4)(i) of the Code states, in general. For purposes of this paragraph (f) an adequate accounting means the submission to the employer of an account book, diary, log, statement of expense, trip sheet, or similar record maintained by the employee in which the information as to each element of an expenditure or use (described in paragraph (b) of this section) is recorded at or near the time of the expenditure or use, together with supporting documentary evidence, in a manner that conforms to all the adequate records requirements of paragraph (c)(2) of this section. An adequate accounting requires that the employee account for all amounts received from the employer during the taxable year as advances, reimbursements, or allowances (including those charged directly or indirectly to the employer through credit cards or otherwise) for travel, entertainment, gifts, and the use of listed property. The methods of substantiation allowed under paragraph (c)(4) or (c)(5) of this section also will be considered to be an adequate accounting if the employer accepts an employee's substantiation and establishes that such substantiation meets the requirements of paragraph (c)(4) or (c)(5). For purposes of an adequate accounting, the method of substantiation allowed under paragraph (c)(3) of this section will not be permitted.

Section 6001 of the Code state that, every person liable for any tax imposed by this title, or for the collection thereof, shall keep such records, render such statements, make such returns, and comply with such rules and regulations as the Secretary may from time to time prescribe. Whenever in the judgment of the Secretary it is necessary, he may require any person, by notice

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served upon such person or by regulations, to make such returns, render such statements, or keep such records, as the Secretary deems sufficient to show whether or not such person is liable for tax under this title. The only records which an employer shall be required to keep under this section in connection with charged tips shall be charge receipts, records necessary to comply with section 6053(c), and copies of statements furnished by employees under section 6053(a).

Section 1.6001-1(a) of the Regulations state, except as provided in paragraph (b) of this section, any person subject to tax under subtitle A of the Code (including a qualified State individual income tax which is treated pursuant to section 6361(a) as if it were imposed by chapter 1 of subtitle A), or any person required to file a return of information with respect to income, shall keep such permanent books of account or records, including inventories, as are sufficient to establish the amount of gross income, deductions, credits, or other matters required to be shown by such person in any return of such tax or information.

Section 1.6001-1(c) of the Regulations state, in addition to such permanent books and records as are required by paragraph (a) of this section with respect to the tax imposed by section 511 on unrelated business income of certain exempt organizations, every organization exempt from tax under section 501(a) shall keep such permanent books of account or records, including inventories, as are sufficient to show specifically the items of gross income, receipts and disbursements. Such organizations shall also keep such books and records as are required to substantiate the information required by section 6033. See section 6033 and sections 1.6033-1 through 1.6033-3.

Current Activities:

- was incorporated by
 - At the time of incorporation also owned and operated other for-profit businesses:
 - “ ”
 - “ ”
 - The majority of the decisions made for were done by

During the initial interview stated that has ceased operating, but in 20XX the organization conducted childcare and educational activities. However, no activities could be verified.

Taxpayer's Position:

has 30 days to respond to the examination determination if they don't agree.

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hasn't responded about inurement and has thirty (30) days to respond.

Government's Position:

isn't operated exclusively for charitable, educational, or religious purposes consistent with I.R.C. section 501(c)(3) of the Code nor section 1.501(c)(3)-1(a) of the Income Tax Regulations and therefore fails to meet the operational test. Specifically, the facts above indicate that they didn't operate exclusively for exempt purposes but assets were used to inure to the benefit of

doesn't meet the operational test due to their earnings inure in whole or in part to the benefit of the founder of the organization.

That is a disqualified person under I.R.C. section 4958.

That the payments and purchases made to:

- direct payments to
 - payments to
 - payments to
 - purchases by checks, debit cards, and cash.
- are inurement and was the recipients of the inurement.

That isn't exempt from Federal Income Tax under I.R.C. section 501(c)(3) due to inurement.

Form 1120 has to be filed by the organization for year ended December 31, 20XX and all subsequent years.

Conclusion:

allowed the organization's assets to be used by a disqualified person.

personal use of assets constitutes inurement and is grounds for revocation of exempt status under I.R.C. section 501(c)(3).